

California High-Speed Train Project



EXECUTION VERSION

Agreement No.: HSR13-06

**Book 3, Part D, Subpart 7
Draft Engineering and Construction
UPRR Agreement**

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Engineering and Construction Agreement
Related to the California High-Speed Rail Authority Project

This Engineering and Construction Agreement Related to the California High-Speed Rail Authority (“Agreement”) is entered this ____ day of ____, 2012 by and between Union Pacific Railroad Company (“UPRR”) and the California High-Speed Rail Authority (“CHSRA”) with respect to the following recitals:

RECITALS

A. UPRR owns, operates, maintains, and dispatches a significant network of critical freight rail routes in California that also host both intercity and commuter passenger rail service. UPRR plays a vital role for both the national and the state economies by maintaining and expanding its ability to move freight by rail; to serve the state’s ports and other shippers; and to relieve the state’s crowded highway network by facilitating the transportation of goods by rail rather than truck, thus reducing traffic congestion, air-pollutant emissions, greenhouse gas emissions and energy consumption. UPRR operates on its own right of way and under agreement on rights of way owned by other entities.

B. CHSRA is a state entity composed of nine members appointed by the Governor, the Senate Committee on Rules, and the Speaker of the Assembly. Under its organizing statutes, CHSRA directs the development and implementation of intercity high-speed rail service that is fully integrated with the state’s existing rail and bus network, consisting of interlinked conventional and high-speed rail lines and associated feeder buses. The intercity network in turn will be fully coordinated and connected with commuter rail lines and urban rail transit lines developed by local agencies.

C. In 2008, the Legislature and the people of California approved Proposition 1A, a \$9.95 billion bond measure to initiate the construction of a high-speed train system that connects San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state’s major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. \$9 billion of the Proposition 1A bond proceeds must be used for planning, engineering, and capital costs for the high-speed rail system. \$950,000,000 of the Proposition 1A bond proceeds must be allocated to eligible recipients for capital improvements to intercity and commuter rail lines and urban systems that provide connectivity to the high-speed train system and its facilities, or that are part of the construction of the high-speed train system, or provide capacity enhancements and safety improvements. The federal government awarded \$3.8 billion in grants under several federal grant cooperative agreements for the California High-Speed Train System. Proposition 1A bond proceeds will be used as federal grant matching funds.

D. The CHSRA Revised 2012 Business Plan (“Business Plan”) proposes a route for the CHSRA system that will cross above or below or run adjacent to UPRR’s right of way in some locations. UPRR and CHSRA executed a Public Project Reimbursement Agreement for Union Pacific Railroad’s Review of the California High-Speed Rail Authority Project Design dated April 20, 2012 (“PE Agreement”).

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E. UPRR, CHSRA, and certain regional commuter rail operators executed a Memorandum of Understanding and Implementing Agreement Related to Implementation of High-Speed Rail in California dated July 11, 2012 (the “MOU”).

F. CHSRA and UPRR now wish to enter this Agreement to describe further terms related to engineering and construction of the Project to be built between Merced and Fresno, as described in the Merced-Fresno Final EIR/EIS.

AGREEMENT

Now, therefore, the parties agree as follows:

Section 1. Incorporation of Recitals.

The recitals set forth above are hereby incorporated into the terms of this Agreement.

Section 2. Defined Terms.

- 2.1. “Access Plan” shall have the meaning set forth in Section 3.11.
- 2.2. “Accessing Party” has the meaning set forth in Section 10.1.
- 2.3. “Agreement” has the meaning set forth in the Title paragraph.
- 2.4. “AREMA” shall mean the American Railway Engineering and Maintenance-of-Way Association.
- 2.5. “Barrier” has the meaning set forth in Section 10.1(b).
- 2.6. “Base Line Design Report” has the meaning set forth in Section 3.1(g)
- 2.7. “Business Plan” has the meaning set forth in Recital D.
- 2.8. “Change in Law” means any change in law or regulatory requirements (other than any change in tax law that is applicable to UPRR generally without taking into account UPRR’s obligations under this Agreement or UPRR’s participation in the Project) on or after July 11, 2012 affecting UPRR or the Project.
- 2.9. “CHSRA” means the California High-Speed Rail Authority.
- 2.10. “Confidential Information” has the meaning set forth in Section 23.
- 2.11. “Construction Schedule” has the meaning set forth in Section 3.2(a).
- 2.12. “Coordination Committee” has the meaning set forth in Section 21.
- 2.13. “Cost(s)” has the meaning set forth in Section 9.2(b).
- 2.14. “DBE” has the meaning set forth in Section 6.
- 2.15. “Design Plans” has the meaning set forth in Section 3.1(c).

- 2.16. “Dispute” has the meaning set forth in Section 25.1.
- 2.17. “Final Plans” has the meaning set forth in Section 3.1(h).
- 2.18. “Force Majeure Event” has the meaning set forth in Section 24.
- 2.19. “Indemnity and Insurance Agreement” has the meaning set forth in Section 22.
- 2.20. “Merced-Fresno Final EIR/EIS” has the meaning set forth in Recital F.
- 2.21. “MOU” has the meaning set forth in Recital E.
- 2.22. “Mutual Interest Improvements” shall mean any structure or facility, whether permanent or temporary, to be modified or constructed as part of the Project on (1) UPRR property or (2) on CHSRA property that are within 102 feet of UPRR property and that could reasonably be expected to have an impact on safe or efficient operations.
- 2.23. “OCIP” means Owner-Controlled Insurance Plan.
- 2.24. “PE Agreement” has the meaning set forth in Recital D.
- 2.25. “Preliminary Engineering Documents” has the meaning set forth in Section 3.1(f)
- 2.26. “Project” shall mean the route for the CHSRA system generally between the San Joaquin River and Calwa, as depicted on Exhibit 2.
- 2.27. “Providing Party” has the meaning set forth in Section 23.
- 2.28. “Receiving Party” has the meaning set forth in Section 23.
- 2.29. “RFC Drawings” shall mean ready for construction drawings of Mutual Interest Improvements.
- 2.30. “UPRR” means Union Pacific Railroad Company.

Section 3. Design and Construction.

3.1. Planning and Design.

(a) The terms of the PE Agreement, as amended from time to time, govern UPRR’s review of the design and construction plans for the Project. In the event of a conflict between the terms of the PE Agreement and the terms of this Agreement, the terms of this Agreement will govern.

(b) CHSRA will design and construct (except as otherwise expressly provided herein), and obtain all required permits or other governmental approvals required for, all Mutual Interest Improvements. All Mutual Interest Improvements will be planned, designed and constructed at CHSRA’s sole cost and expense. CHSRA intends to use a design/build contract for the Project.

(c) Mutual Interest Improvements must be designed and constructed in accordance

with all applicable laws, rules, regulations, AREMA standards, UPRR standards and specifications, which are attached hereto as Exhibit 3, UPRR communication and safety protocols and sound engineering practices. As between AREMA and UPRR standards, the more rigorous or stringent standard shall apply. UPRR promptly will give CHSRA copies of changes to UPRR standards and specifications and all Mutual Interest Improvements will comply with the most current UPRR standards and specifications provided to CHSRA; provided that CHSRA will not be obligated to modify the Final Plans to conform to changed UPRR standards and specifications provided to CHSRA after approval of the Final Plans unless CHSRA does not begin construction of the affected Mutual Interest Improvements within six months after UPRR approves the Final Plans.

(d) Except as may be permitted in UPRR-approved Final Plans, at any location where the centerline of CHSRA tracks will be designed to be 102 feet or closer to UPRR's property, CHSRA must design, construct, and maintain intrusion barriers between the CHSRA tracks and UPRR's property. UPRR acknowledges that CHSRA will seek many such exceptions when it reasonably believes that approval of an exception would not have an adverse impact on safe or efficient operations.

(e) Except as may be permitted in UPRR-approved Final Plans, all Mutual Interest Improvements must (1) clear-span UPRR's right of way and (2) be designed to permit CHSRA access for inspection, maintenance, repair, and renewal without CHSRA needing to enter UPRR's property. UPRR acknowledges that CHSRA will seek many such exceptions when it reasonably believes that approval of an exception would not have an adverse impact on safe or efficient operations,.

(f) CHSRA will provide UPRR with a copy of those preliminary engineering documents for the Project (the "Preliminary Engineering Documents"), which documents were provided to the CHSRA Design Build Contractor. UPRR will provide CHSRA with approval of, or written review comments on, the Preliminary Engineering Documents within forty-five (45) days of receipt, including any time before execution of this Agreement or within five (5) days of execution if more than forty-five (45) days pass between such receipt and execution. If UPRR does not approve the Preliminary Engineering Documents, UPRR and CHSRA will meet promptly to discuss and resolve any review comments and endeavor in good faith to make any changes necessary to secure UPRR's approval within forty-five (45) days of the completion of such discussions. UPRR approval shall not be unreasonably withheld or conditioned. UPRR will use commercially reasonable efforts to complete the initial review and any secondary review substantially faster than the prescribed deadlines.

(g) CHSRA will provide UPRR with a base line design report for the Project (the "Base Line Design Report"). UPRR will review those aspects of the Base Line Design Report that could reasonably be expected to have an impact on safe or efficient operations and provide CHSRA with approval of, or written review comments on, such aspects of the Base Line Design Report within forty-five (45) days of receipt. If UPRR does not give such approval, UPRR and CHSRA will meet promptly to discuss and resolve any review comments and endeavor in good faith to make any changes necessary to secure UPRR's approval within forty-five (45) days of the completion of such discussions. UPRR approval shall not be unreasonably withheld or conditioned. UPRR will use commercially reasonable efforts to complete the initial review and any secondary review substantially faster than the prescribed deadlines.

(h) CHSRA will provide UPRR with CHSRA's final design plans (the "Final Plans").

UPRR will provide CHSRA with approval of, or written review comments on, the Final Plans within thirty (30) days of receipt. If UPRR does not approve the Final Plans, UPRR and CHSRA will meet promptly to discuss and resolve any review comments and endeavor in good faith to make any changes necessary to secure UPRR's approval within thirty (30) days of the completion of such discussions. UPRR approval shall not be unreasonably withheld or conditioned. UPRR will use commercially reasonable efforts to complete the initial review and any secondary review substantially faster than the prescribed deadlines. After approval of the Final Plans, no change shall be made in a Mutual Interest Improvement unless approved in writing by UPRR, which approval shall not be unreasonably withheld, conditioned or delayed.

(i) To assist in expediting UPRR approval of the Final Plans, CHSRA will provide to UPRR with CHSRA's 60% and 90% design plans. UPRR and CHSRA will meet promptly to discuss the review of such 60% and 90% design plans if either party reasonably believes it will expedite approval of the Final Plans.

(j) Except as may be otherwise agreed, CHSRA will not commence construction of Mutual Interest Improvements before UPRR approves the Final Plans. UPRR acknowledges that CHSRA will seek many such exceptions based upon RFC Drawings when it reasonably believes that commencement of construction of a Mutual Interest Improvement depicted in an RFC Drawing before UPRR's approval of the Final Plans would not have an adverse impact on safe or efficient operations.

(k) UPRR will use commercial best efforts to make resources available to ensure timely completion of its work related to design and construction review. As part of this effort, UPRR will hire or assign a member of its engineering staff to be dedicated to design and construction issues related to the CHSRA system. CHSRA will reimburse UPRR for all actual costs associated with this person's employment, including wages, standard additives, travel, relocation, and the pro rata cost of office space.

3.2. Construction Schedule.

(a) The Coordination Committee will develop a construction schedule for the Mutual Interest Improvements, using critical path method (the "Construction Schedule"). The Construction Schedule will, to the extent reasonably possible, limit the time during which UPRR operates over temporary trackage. At no time will UPRR be prevented from operating over main line trackage (except with respect to permanent main line trackage when corresponding temporary main line trackage is available).

(b) CHSRA will furnish to UPRR, and update on a weekly basis, a detailed Construction Schedule (typically 3-week look ahead) showing both sequence and location of construction work to assist both parties in the effective scheduling of resources necessary to accomplish the work.

3.3. Construction.

(a) CHSRA will construct all Mutual Interest Improvements, except for the Mutual Interest Improvements on UPRR property that are listed on Exhibit 3, which will be constructed by UPRR forces or a UPRR contractor; provided that all work done on UPRR's property will be consistent with UPRR's labor agreements, as required by 49 U.S.C. 24405 or otherwise. UPRR will use commercially reasonable efforts to make resources available to ensure timely

completion of construction work to be conducted by UPRR forces or a UPRR contractor.

(b) CHSRA will construct Mutual Interest Improvements at times and in a manner as to not unreasonably interfere with, delay, or endanger freight and passenger rail operations. CHSRA and UPRR will consult with each other to coordinate scheduling of construction work that could affect freight rail operations. UPRR will consider proposals for how to most efficiently perform construction work on UPRR property and to prevent any interference or disruption with UPRR's operations. Without limiting the generality of the foregoing, the parties will identify opportunities for exclusive windows of access to railroad right-of-way for purpose of construction, and at other times, non-exclusive access with Form B flagging.

(c) CHSRA must select experienced contractors that have bonding and insurance coverage consistent with reasonable and customary standards in the railroad industry; CHSRA will select contractors with Class 1 railroad construction experience. CHSRA and its contractors must execute a right of entry agreement with UPRR before entering property owned or controlled by UPRR.

(d) CHSRA will be responsible to UPRR (including its affiliated railroad companies) for all damages for unscheduled delays which may be sustained by UPRR, its employees, tenants, or freight in its care in the event such delays are caused by any breach of this agreement by CHSRA, or any negligent act or omission of CHSRA or its contractors, agents, or employees.

3.4. Inspection of Mutual Interest Improvements. UPRR will have the right to monitor construction of Mutual Interest Improvements and may hire a firm to observe such construction on its behalf. The construction observers will not direct or control construction activities. CHSRA will respond in writing with a proposed course of action within ten (10) days of receiving a written complaint or concern from a construction observer that a Mutual Interest Improvement is being constructed in a manner that is inconsistent with the corresponding RFC Design provided that such complaint or concern is presented to CHSRA within a reasonable time after discovery. CHSRA will reimburse UPRR for the reasonable and actual costs of using construction observers.

3.5. Change Orders. CHSRA will notify and obtain UPRR's advance written consent to change orders that CHSRA believes are material to the design and construction of the Mutual Interest Improvements. Within five (5) days of receipt of a change order review request from CHSRA, UPRR will provide approval or written review comments on the change order. If UPRR provides written review comments, UPRR and CHSRA will meet promptly to discuss the review comments and endeavor in good faith to make any changes necessary to secure UPRR's approval of the change order, which approval shall not be unreasonably withheld, conditioned or delayed.

3.6. Methods and Procedures. CHSRA will provide copies of the methods and procedures of performing Mutual Interest Improvements to UPRR for review. Such methods and procedures will include procedures for parking, placement and usage of any vehicle or equipment that could foul UPRR trackage or encroach upon UPRR property, fuel storage and handling of electrical equipment, unless otherwise covered in the Base Line Design Report or applicable laws, rules, standards or specifications. If UPRR has any comments or concerns regarding such methods and procedures, the Coordination Committee shall endeavor in good faith to make any changes necessary to rectify UPRR's comments or concerns. CHSRA will also submit to UPRR for

approval, prior to construction, plans and calculations certified by a licensed professional engineer of the State of California for falsework or shoring that provides lateral or subjacent support for UPRR property or facilities. UPRR will have the right to approve within thirty (30) days of receipt of CHSRA's contractors' proposed methods and procedures and falsework/shoring plans and calculations, UPRR will provide approval or written review comments on such methods, procedures, plans and calculations. If UPRR provides written review comments, UPRR and CHSRA will meet promptly to discuss the review comments and endeavor in good faith to make any changes necessary to secure UPRR's approval of such methods, procedures, plans and calculations, which approval shall not be unreasonably withheld, conditioned or delayed. No Mutual Interest Improvements may be commenced until UPRR has approved such methods, procedures, plans and calculations. CHSRA will at all times keep covered all pits or openings within twenty-five (25) feet of or under UPRR trackage, except during the time required for actual operations in making such pits or openings and performing work therein.

3.7. Right to Stop Work.

(a) If (i) CHSRA's contractors prosecute Mutual Interest Improvements (A) in material non-compliance with the Final Plans or otherwise in material non-compliance with the requirements of this Agreement; or (B) in a manner that UPRR reasonably deems to be potentially hazardous to UPRR property or facilities, or the safe and efficient movement of its trains, locomotives, or railcars, or (ii) the insurance required to be maintained by CHSRA (under its OCIP or otherwise) is canceled during the course of the Project, CHSRA or its contractors, as applicable, will upon notice received from UPRR, stop the construction of Mutual Interest Improvements until the acts or omissions of CHSRA or its contractors have been fully rectified to UPRR's reasonable satisfaction or, as the case may be, evidence of required insurance coverage has been delivered to and accepted by UPRR.

(b) UPRR has the right to request that any employee, contractor, or subcontractor of CHSRA be removed from the Project site and denied further work on the Project for incompetence, neglect of duty, unsafe conduct, or misconduct if, in UPRR's reasonable judgment, the incompetence, neglect of duty, unsafe conduct, or misconduct may materially impair the safety of UPRR's operations, facilities, or property. If CHSRA or its contractors elect not to honor such a request for removal from the Project, UPRR may stop the construction of Mutual Interest Improvements until the matter has been fully rectified to UPRR's reasonable satisfaction.

3.8. As-Built CAD Drawings. After the Project construction is completed, CHSRA will furnish to UPRR, in a format acceptable to UPRR, one (1) set of as-built plans, at no cost to UPRR, prepared in U.S. Customary Units, and one (1) set of computer compact discs, containing as-built CAD drawings of the Mutual Interest Improvements, identifying the software used to prepare the CAD drawings. The as-built plans must (i) depict all information in UPRR engineering stationing and mile post pluses; (ii) include plan and profile, structural drawings and specifications, and drainage plans; and (iii) show all Mutual Interest Improvements.

3.9. Relocation of Existing Utilities. As between CHSRA and UPRR, it is CHSRA's responsibility, at CHSRA's sole cost, to design and coordinate the protection, modification, and relocation, as necessary, of all existing utilities that are affected by the Project, both on and off UPRR property, including but not limited to fiber optic lines and pipelines, subject to UPRR's review and approval. CHSRA will prepare any and all notices and other transmittals to utility

companies that are required in connection with such work.

3.10. Drainage and Clearances. CHSRA's Final Plans must provide for sufficient drainage to protect UPRR's property and facilities. CHSRA will comply with the clearance requirements contained in the approved Final Plans.

3.11. No Interference With Adjacent Operations. CHSRA will develop a plan for UPRR's continued access to and use of UPRR property or facilities adjacent to the Mutual Interest Improvements (the "Access Plan"). UPRR will provide CHSRA with approval of, or written review comments on, the Access Plan within thirty (30) days of its receipt. If UPRR provides written review comments, UPRR and CHSRA will meet promptly to discuss and resolve any review comments and endeavor in good faith to make any changes necessary in the Access Plan to secure UPRR's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

3.12. Redeployment of UPRR Forces.

(a) CHSRA acknowledges that delays in the Project that prevent work on the Mutual Interest Improvements to be constructed by UPRR forces may require UPRR to send its labor forces to other job sites temporarily and, in that event, CHSRA will extend the projected completion date for such Mutual Interest Improvements as necessary to allow for reasonable demobilization/mobilization periods; provided, however, that UPRR will, unless not reasonably practicable due to an unforeseen emergency: (i) consult with CHSRA to discuss alternative solutions prior to sending its labor forces to other job sites; and (ii) reassign demobilized forces back to the Project as soon as reasonably practicable.

(b) CHSRA acknowledges that, in the event of a Force Majeure Event causing an unforeseen railroad emergency on the UPRR railroad system, UPRR will have the right to reallocate those of its labor forces assigned to work on the Mutual Interest Improvements to be constructed by UPRR forces if UPRR believes in good faith that such reallocation is necessary to provide for the immediate restoration of the railroad operations of UPRR or its affiliates or to protect persons or property on or near any property owned by UPRR or any related railroad. UPRR will reassign such labor forces to again work on such Mutual Interest Improvements when, in its sole opinion, such emergency condition no longer exists. UPRR will not be liable for any additional costs or expenses of the Project resulting from any such reallocation of its labor forces.

3.13. Completion and Acceptance.

(a) UPRR and CHSRA will each issue a notice of substantial completion to each other within thirty (30) days of substantially completing its respective work on the Mutual Interest Improvements. Substantial completion will occur when the Project is able to be placed in service in accordance with applicable laws and regulations, subject only to minor punch list items that do not materially affect the utility of the Project or UPRR's use of its property and facilities. Upon receipt of both parties' notices of completion, the parties will conduct a joint inspection of the Project at a mutually agreeable time.

(b) The parties will each issue a certificate of final acceptance of UPRR's and CHSRA's work:

(i) within thirty (30) days after the joint inspection, or;

(ii) if necessary corrective punch list action items are noted during the joint inspection, final acceptance will be issued within thirty (30) days after corrections are completed to both parties' reasonable satisfaction.

(c) The Project will be deemed completed and the responsibilities for operation and maintenance of the various components of the Project will be allocated upon the issuance of certificates of final acceptance by the parties.

3.14. Disclaimer of Liability or Warranty. Notwithstanding UPRR's review and approval rights or the final acceptance procedures or any other provisions of this Agreement, UPRR will not be liable for the structural design of the Mutual Interest Improvements or any deficiencies therein and makes no warranties of any kind, express or implied, including, without limitation, the warranty of fitness for a particular purpose or the accuracy or completeness of any information it provides to CHSRA. By using a construction observer, UPRR assumes no responsibility or liability for the quality of materials or workmanship, for conformity of the Mutual Interest Improvements to the RFC Designs, or for the acts or omissions of CHSRA, CHSRA's contractors, or anyone retained by or acting on behalf of CHSRA or its contractors.

Section 4. Procurement.

CHSRA acknowledges that this Agreement is not a "fixed price" construction agreement and that CHSRA will reimburse UPRR for eligible project costs as provided in this Agreement. Subject to the foregoing, to the extent reasonably practicable, contracts that UPRR awards for the Project will be awarded as fixed price contracts through the use of competitive procedures. Contracts that UPRR awards for the Project will be conducted in accordance with the then-current procurement practices of UPRR, which practices comply with the procurement standards of 49 CFR Part 18 and with the procurement standards of the State of California.

Section 5. Wage and Labor Terms.

5.1. State and Local Wage Laws. UPRR is governed by the Federal Railway Labor Act with respect to the wages paid to its employees and will not be subject to state or local minimum wage or prevailing wage laws or regulations.

5.2. Collective Bargaining Agreements. All collective bargaining agreements with employees of UPRR (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by UPRR forces.

5.3. Davis-Bacon Act. UPRR wages are established through collective bargaining agreements negotiated under the Railway Labor Act and as such are deemed to comply with Davis Bacon Act requirements. UPRR will require UPRR contractors working on Mutual Interest Improvements to pay their employees according to prevailing wage rates.

Section 6. Disadvantaged Business Enterprises.

UPRR will encourage participation by small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined in 49 CFR Part 26) by establishing a Project specific goal of disadvantaged business enterprise (hereinafter, "DBE") participation in the solicitation of bids. This goal will be agreed upon by CHSRA and UPRR. The goal-setting

process will be based on the availability of ready, willing, and able disadvantaged business enterprises in the location of the Project. UPRR will make a good-faith effort to obtain DBE participation on the Project at or above the DBE participation goal.

Section 7. Registration.

UPRR will comply with the requirements of Section 1512(h) of ARRA, whereby UPRR will maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) Number and a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it has active federal awards funded with ARRA funds.

Section 8. Prohibited Use of Funds.

Pursuant to Section 1604 of the ARRA, UPRR agrees that it will not expend any federal funds received under this Agreement on any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

Section 9. Payment of Costs.

9.1. Project Benefits. The parties agree that a basic premise underlying this Agreement is that construction of the Project is for CHSRA's sole benefit, with no ascertainable benefit to UPRR, and that UPRR will not be required to contribute to the cost of the Project.

9.2. Reimbursement to UPRR by CHSRA.

(a) CHSRA will reimburse UPRR for all Costs related to UPRR's construction of Mutual Interest Improvements. If UPRR is required to pay or collect any federal, state, local, sales and use, value-added, goods and services, or any other similar taxes or duties imposed as a result of this Agreement, including, but not limited to, taxes or duties imposed due to the Mutual Interest Improvements or on tangible/intangible property consumed in, or acquired for, the construction of Mutual Interest Improvements, then such taxes or duties will be invoiced to and paid by CHSRA pursuant to the terms herein; provided, however, that CHSRA will not be required to pay any taxes based on UPRR's net income.

(b) For purposes of this Agreement, "Costs" means all costs and expenses incurred by UPRR or a UPRR contractor in the performance of any services, and all costs and expenses of labor, travel, lodging, meals, supplies, and materials incurred for or in connection with UPRR's provision of services, including, without limitation, delivery charges and UPRR's additives (includes direct and indirect labor additives and overhead) as set forth in Exhibit 10. Notwithstanding the foregoing, additives are subject to periodic adjustments by UPRR in its sole discretion, consistent with its federally audited labor additive rates for all direct and indirect overhead labor costs.

(c) Notwithstanding any additional requirements of this Agreement, invoices will also contain the CHSRA's contract number, the date of the invoice, and the applicable billing period. Backup documentation will reflect the names of staff who performed services, the number of hours worked, and the cost. UPRR will submit all invoices not more frequently than once per month in arrears to CHSRA as follows:

California High Speed Rail Authority
Financial Operations Section

770 L Street, Suite 800
Sacramento, CA 95814

(d) CHSRA will effect payment to UPRR by check via U.S. mail or by Automatic Clearing House. UPRR has previously completed a Vendor/Payment Setup Form for this purpose. CHSRA will process invoices and make payments in compliance with the requirements of the California Prompt Payment Act, Government Code §927 et seq.

9.3. Emergency Work. CHSRA agrees to reimburse UPRR for work on UPRR's facilities and property of an emergency nature caused by any act or omission of CHSRA or its contractors in connection with the Project that UPRR reasonably deems necessary for the immediate restoration of railroad operations or for the protection of persons on property owned, controlled, or leased by UPRR in or about the vicinity of the construction area. Such work may be performed by UPRR without the prior approval of CHSRA.

9.4. Invoices. UPRR will submit invoices to CHSRA for the actual costs of railroad-performed work and related expenses, which will include but not be limited to design, force account and contract labor, equipment, and materials used in relation to the Project. UPRR may submit invoices on a monthly basis throughout design and construction of the Project, but should submit invoices no less often than every three months. CHSRA will pay such invoices within forty-five (45) days of receipt. If CHSRA disputes a bill, CHSRA will, within thirty (30) days after receipt of the invoice, notify the railroad of the disputed amount and request supporting documentation to verify the accuracy of the invoice and pay UPRR any undisputed amount within forty-five (45) days of receipt of the invoice. CHSRA will thereafter pay UPRR any remaining portions of the invoice within thirty (30) days of receipt of documentation adequate to justify the disputed expenditures. UPRR will submit its final billing to CHSRA within 180 days after the railroads issue a certificate of completion of the Project. The parties will not use offset accounting practices for billing and payments.

9.5. Salvage. In its sole discretion, UPRR may retain ownership of any materials removed from UPRR property during construction of the Project, in which case CHSRA (having paid the entire cost of the modification that generated the salvage materials) shall receive a credit or payment for the net liquidation value of the materials.

9.6. Financial Services. The parties will use the services of an independent professional with construction management experience to manage the Project funding, including receiving, reviewing, and forwarding invoices; tracking payment of state and federal funds; and keeping records of funding transactions. The service provider will also be responsible for reporting compliance with federal requirements. UPRR will select the service provider, subject to the written approval of CHSRA. CHSRA will be solely responsible for paying the costs of the

Section 10. Reciprocal Access and Notice Rights.

10.1. Except for emergencies, which will be treated in accordance with subsection 10.2, and in compliance with all applicable rules and regulations of the FRA, CHSRA and UPRR (and their contractors, invitees, and licensees) (each an "Accessing Party") will be governed by the terms and procedures set forth in this Section in the performance of the construction, repair, maintenance or operations of their facilities:

(a) Entry by the Accessing Party on the other party's property will be only by the Accessing Party's personnel trained in the other party's safety practices. When employees, vendors, or contractors of CHSRA enter upon UPRR's property or perform any work, including work on overhead catenary, within twenty-five (25) feet of any active freight trackage, they must comply with the then-current safety requirements of UPRR as found at www.Contractorientation.com and www.eRailsafe.com and follow all instructions given by the construction manager or UPRR representatives. Upon notice to CHSRA that UPRR will be entering CHSRA's property, CHSRA will take any steps necessary to protect safety with respect to CHSRA's catenary, including, if necessary, de-energizing the catenary.

(b) When either party is working wholly upon its own property and at such locations where a safety wall or fence (collectively referred to as "Barrier") separates the facilities of each party from one another, no advanced notice need be given, provided such work does not involve equipment or material having the potential to extend over, under, around or through such Barrier and does not foul or interfere with the operations, trackage or facilities of the other party.

(c) When either party desires to access on any portion of the other party's property and all personnel, materials and equipment will, at all times, be at least 25 feet from the nearest track, the Accessing Party will give the other party at least seven (7) days' prior telephonic notice, receipt of which will be acknowledged by the receiving party, of any entry on the other party's property in the Corridor, and Accessing Party will not enter upon the other party's property until a valid work permit is issued by the other party. The parties will work through the Coordination Committee to develop a process for shorter notice.

(d) Any entry by an Accessing Party on any portion of the other party's property to perform any work at, above, or below grade during which any person, material, or equipment that will be within twenty-five (25) feet of any track, or will be near enough to any track that an equipment extension (such as, but not limited to, a crane boom) may reach to within twenty-five (25) feet of any track will require the Accessing Party to provide the other party with at least seven (7) days prior telephonic notice, and no entry upon the other party's property will be made until the Accessing Party has made arrangements for flagging protection and any additional safety measures required by the other party. The parties will work through the Coordination Committee to develop a process for shorter notice.

10.2. Emergency Access.

In the event of an emergency of any kind, the Accessing Party may enter upon the other party's property (i) to warn the other party's trains by any reasonable means, including, without limitation, use of flaggers or placement of torpedoes upon the other party's tracks, or (ii) in the event of a wreck or derailment of the Accessing Party's train or equipment, to clear the train, equipment or other debris from the other party's property. The Accessing Party will provide immediate notice of such events to the other party's dispatcher in accordance with UPRR's Communications and Safety Protocols.

Section 11. Flagging.

11.1. CHSRA will pay UPRR's actual costs for any flagging or other special protective or safety measures that UPRR performs in relation to CHSRA's activities under this Agreement. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-

hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with labor agreements and schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, railroad retirement and unemployment compensation, supplemental pension, employee liability, and property damage and administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays, and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between UPRR and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, CHSRA will pay on the basis of the new rates and charges.

11.2. Reimbursement to UPRR for flagging will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other UPRR work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other UPRR work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which UPRR is required to pay the flagman and which could not reasonably be avoided by UPRR by assignment of such flagman to other work, even though UPRR may not be working during such time.

11.3. During construction of the Project, when it becomes necessary for UPRR to assign an employee to a flagging position on a long-term basis in compliance with union collective bargaining agreements, CHSRA must provide UPRR a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, CHSRA will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to UPRR if flagging services are needed again after such five day cessation notice has been given to UPRR.

Section 12. Record Keeping and Audits.

12.1. UPRR will maintain for a period not less than three (3) years from the date of payment of the final invoice under this Agreement and will require its contractors and subcontractors to maintain for a period not less than three (3) years from the date of payment of the final invoice under any contracts and subcontracts, each of the following:

- (a) Adequate books, records, and supporting documents to verify the amounts and uses of all disbursements of funds in conjunction with the Project;
- (b) Records sufficient to identify the application of funding, together with supporting documentation, including, without limitation, paid invoices; and
- (c) All other records necessary to disclose the amount and disposition of funding hereunder, including the following: (i) the nature of such expenditures; (ii) the total cost of each undertaking for which funds were disbursed hereunder; (iii) the amount, if any, of funds supplied by other sources for the construction of the Project; and (iv) any other books, records, and documents reasonably necessary to maintain a complete verification of UPRR's obligations under this Agreement.

12.2. If any litigation or claim involving this Agreement has been filed before the expiration of the 3 year period described in Section 12.1 or any audit permitted hereunder has commenced before the expiration of the 3 year period described in Section 12.1, UPRR will maintain the records required by Section 12.1: (1) in the case of any litigation or claim, until completion of the action and resolution of all issues which arise from it, or until the end of such 3 year period, whichever is later; and (2) in the case of any audit, until completion of the audit or until the end of such 3 year period, whichever is later.

12.3. Pursuant to Section 902 of the ARRA, the records and materials described in Section 12.1 will be available for review and audit by CHSRA, DOT, the U.S. Comptroller General, or their authorized representatives during normal business hours and upon at least seven (7) days advance written notice. Upon reasonable notice, CHSRA, DOT, the U.S. Comptroller General, or their authorized representatives likewise will have authority to interview any officer or employee of UPRR or any of its contractors or subcontractors regarding transactions related to Federal funding for the Project. UPRR will reasonably cooperate with any audit conducted by CHSRA, DOT, the U.S. Comptroller General, or their authorized representatives and will provide full access to all relevant materials. Nothing herein is meant to be or will be interpreted to be a waiver of any protection against disclosure of records or communication otherwise provided by law, including, without limitation, protection provided by attorney-client privilege or the attorney work-product doctrine.

12.4. Any Project costs for which UPRR has received payment or credit that are determined by subsequent audit to be unallowable, are subject to repayment by UPRR to CHSRA.

Section 13. ARRA Reporting.

CHSRA agrees that it is responsible for performing and completing all ARRA reporting requirements for the Project. CHSRA acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of CHSRA and not of UPRR, and (ii) CHSRA will not delegate any ARRA reporting responsibilities to UPRR. UPRR will provide to CHSRA its standard and customary billing and supporting documentation for expenses incurred by UPRR on the Project; provided, that UPRR will, upon request by CHSRA, provide to CHSRA any additional information reasonably accessible or available to UPRR that is needed for CHSRA to perform and complete the ARRA reporting requirements. CHSRA will furnish to UPRR a list, at least forty five (45) days prior to the date CHSRA requires such information, setting forth the specific information that CHSRA requests that UPRR provides in order for CHSRA to meet its reporting requirements.

Section 14. Compliance with Law.

14.1. Laws Applicable to the Project. CHSRA and UPRR will comply with all applicable state and federal laws and regulations that apply to work done on the Project. Without limiting the generality of the foregoing, CHSRA shall install and maintain any walls, barriers or intrusion detection systems required by law. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to UPRR because of its status as common carrier regulated by the federal government.

14.2. Civil Rights Laws. UPRR will comply with all civil rights laws and regulations in relation to construction of the Project. These include, but are not limited to, the following: (a) Title VI of

the Civil Rights Act of 1964 (P.L. 88 352) (as implemented by 49 C.F.R. Part 21), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681 1683, and 1685 1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601 1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92 255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91 616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd 3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title V111 of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) E.O. 11246 as amended by E.O. 11375, and as supplemented by regulations at 41 CFR part 60, which ensures that all business organizations receive fair and equal consideration and prohibits discrimination against any employee; (k) any other nondiscrimination provisions in the specific statutes under which application for Federal assistance was made; and (l) the requirements of any other nondiscrimination statutes which may apply to UPRR with respect to the Project. UPRR will include a provision that requires compliance with E.O. 11246 as amended by E.O. 11375, and as supplemented by regulations at 41 CFR part 60 in all lower tier contracts entered into by UPRR solely in connection with the Project after the date of the execution and delivery of the Agreement.

14.3. Americans With Disabilities Act. UPRR will utilize funds provided under this Agreement in a manner consistent with the requirements of the Americans With Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.)

14.4. Whistleblower Protections. UPRR will comply with the State, local government, and contractor whistleblower protections under ARRA Section 1553.

14.5. Violations of Law. UPRR will report to the DOT Inspector General or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. §§ 3729 et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds applied to the Project.

Section 15. Certifications.

UPRR will obtain certifications on debarment and suspension from their third-party contractors and subcontractors and otherwise comply with respect to the Project with DOT regulations “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, and “Governmentwide Requirements for Drug Free Workplace (Grants),” 49 C.F.R. Part 32.

Section 16. Federal Lobbying Activities.

16.1. UPRR will abide by the requirements of the “New Restrictions on Lobbying” set forth at 49 CFR Part 20 in relation to the Project.

16.2. UPRR certifies that to the best of its knowledge and belief that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of UPRR, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid, by or on behalf of UPRR to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the applicable railroad will complete and submit Standard Form-LLL (Rev. 7“97), "Disclosure of Lobbying Activities," in accordance with its instructions.

16.3. UPRR will include the language of Section 16.2(a)-(b) in the award documents for all contracts it enters into solely in relation to the Project under which federal funds may be paid. The language of Section 16.2(a)-(b) included in those award documents will be modified to apply to the contractors and require the contractors to include the same language in all subcontracts.

Section 17. Ownership of Improvements.

17.1. Except as may be provided with respect to any easements granted pursuant to Section 17.2. the Mutual Interest Improvements will be owned by the party upon whose property they are located. Neither party will have a right of ownership in improvements owned by the other. Neither party may create any lien or encumbrance in or against any improvements owned by the other. UPRR will use the property, equipment, and supplies acquired with public funds for construction of the Project for the duration of their useful life.

17.2. All real estate transactions (including any grants of temporary or permanent easements) between the parties, if any, will be memorialized through separate agreements. The execution and performance of this Agreement will not serve to give either party any rights to property owned or controlled by the other party.

Section 18. Public Records Act.

CHSRA is subject to the California Public Records Act. UPRR acknowledges that all information that it submits to CHSRA will become agency records and thus may be subject to public release through individual PRA requests. UPRR acknowledges that CHSRA may make information related to the expenditure of public funds on this Project available on official government websites. CHSRA will promptly send UPRR written notice of any PRA requests that CHSRA receives for information related to the Project or this Agreement.

Section 19. No Rights to Goods or Services.

The parties intend for the Project to both benefit the public and to become a permanent part of CHSRA and UPRR's working capital. CHSRA will not receive and will not be entitled to any

specific goods or services from UPRR or its affiliates in return for any payments by CHSRA to UPRR in connection with this Agreement.

Section 20. Additional Understandings.

The parties understand, acknowledge and agree as follows:

20.1. The development and implementation of high-speed passenger service and completion of the Project is dependent upon events and circumstances outside of the control of the parties hereto (including the procurement of certain approvals from FRA or other regulatory authorities), and therefore, neither party can or will covenant or commit to a date certain by which the final development and implementation of high-speed rail service or completion of the Project must occur.

20.2. Except as otherwise agreed by UPRR and CHSRA, in no event will UPRR be required to expend any of its own funds in constructing the improvements contemplated by this Agreement unless prompt reimbursement of such funds is assured to UPRR in a manner reasonably acceptable to UPRR. In no event will UPRR have any obligation with respect to any required repayment of all or any portion of the proceeds of federal funds used to pay for the design or construction of the Project.

20.3. CHSRA will be responsible for the cost of all materials purchased or for which a commitment or obligation to purchase has been made and all delivery, handling, transportation or storage costs with respect to such Materials.

20.4. Any estimated costs, if any, are approximations and remain subject to change.

Section 21. Coordination Committee.

The parties will establish a construction coordination committee (the “Coordination Committee”) consisting of at least two representatives of CHSRA and two representatives of UPRR. The Coordination Committee will be a forum for the parties to share information, discuss matters submitted by one party to another party for review or approval, discuss construction progress and challenges (including flagging costs and scheduling) and discuss possible resolutions of any issues among the parties with respect to this Agreement. The Coordination Committee will meet (in person or telephonically) throughout the construction of the Project. The meetings will be held once per month and also as necessary to address issues between the parties that require prompt resolution. The Coordination Committee will dissolve upon issuance of certificates of final acceptance pursuant to Section 3.13.

Section 22. Indemnity and Insurance.

The terms of the Insurance and Indemnity Agreement Between Union Pacific Railroad and the California High-Speed Rail Authority Related to High-Speed Rail Development in California (“Indemnity and Insurance Agreement”) dated __ ____, will apply to all activities performed by the parties in relation to or under the terms of this Agreement. A copy of the Indemnity and Insurance Agreement is attached to this agreement as Exhibit 22.

Section 23. Confidentiality.

For the purposes of this Section 23, “Confidential Information” means any information delivered to either party (the “Receiving Party”) by or on behalf of the other party (the “Providing Party”) in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary, privileged, or confidential in nature and that was clearly marked or labeled or otherwise adequately identified when received by the Receiving Party as being proprietary, privileged, or confidential information of the Providing Party, provided that such term does not include information that (a) was publicly known or otherwise known to the Receiving Party prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by the Receiving Party or any person acting on the Receiving Party’s behalf, or (c) constitutes financial statements that are otherwise publicly available. The Receiving Party will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by the Receiving Party in good faith to protect confidential information of third parties delivered to it, provided that the Receiving Party may deliver or disclose Confidential Information to (a) its directors, officers, employees, agents, attorneys, and affiliates (to the extent such disclosure reasonably relates to the administration of the transactions contemplated by this Agreement), (b) its financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section, (c) any federal or state regulatory authority having jurisdiction over the Receiving Party, and (d) any other person to which such delivery or disclosure may be necessary or appropriate (i) to effect compliance with any law, rule, regulation or order applicable to the Receiving Party, (ii) in response to a subpoena or other legal process, (iii) in connection with any litigation to which the Receiving Party is a party, or (iv) to the extent the Receiving Party may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under this Agreement.

Section 24. Force Majeure.

Each party will be temporarily excused from the performance of any of its obligations under this Agreement, except obligations involving indemnification, maintenance of insurance, and the payment of money to the other party, during the time when such nonperformance is caused by a Force Majeure Event. For purposes of this Agreement, a “Force Majeure Event” means government regulation or order; acts of terrorism; riots; insurrection or war; picket lines, strikes, or lockouts by third parties providing labor, material, or services under contract to a party; delays caused by the other party to this Agreement; derailments; wrecks or freight embargoes; inability to procure critical materials; unforeseen catastrophic railroad emergencies anywhere within the UPRR system; and earthquake, flood, cloudburst, tornado, or other phenomena of nature beyond the power of a party reasonably to foresee or to make preparation in defense against, but not including rain, windstorm, or other natural phenomena of normal intensity based on U.S. Weather Bureau reports for the particular locality and for the particular season of the year in which the work is being performed. In all cases, the party asserting a Force Majeure Event as the basis for temporary excuse from performance must, as soon as practicable after learning of the conditions related to the Force Majeure Event, provide written notice of the Force Majeure Event to the other party. The notice must explain the nature of the Force Majeure Event, what obligations in this Agreement it affects, the date the Force Majeure Event arose, and an estimate of how long the Force Majeure Event will interfere with the noticing party’s ability to perform all of its obligations. The party claiming an excuse from performance under this Agreement must promptly resume full performance of its obligations upon recovery from or cessation of the Force Majeure Event.

Section 25. Dispute Resolution Process.

25.1. In the event a claim, dispute, or controversy arises between CHSRA and UPRR concerning the interpretation, application, or implementation of this Agreement (“Dispute”) that is not resolved by the Coordinating Committee, either party may initiate formal dispute resolution by transmitting written notice describing the nature of the Dispute in accordance with Section 25.2 below. Within three (3) days of receipt of such notice, the parties will initiate prompt, diligent, and good-faith negotiations to resolve such Dispute.

25.2. In the event the parties are unable to resolve the Dispute within thirty (30) days from the initiation of negotiation pursuant to Section 25.1, the parties will mediate such dispute. The mediation will be conducted in Sacramento, California, in accordance with such procedures, and on such time schedules as the parties will mutually agree. The mediator will be selected by mutual agreement of the parties, but in the absence of such agreement each party will select a temporary mediator and those mediators will jointly select the permanent mediator. Each party will bear its own costs and expenses, but the mediator’s fees and costs will be borne equally by the parties. Each party will participate in such mediation in good faith, but in the event mediation is unsuccessful, the parties will authorize the mediator to issue a non-binding advisory opinion. In issuing such opinion, the mediator may take such additional evidence, and permit the parties to submit oral and/or written argument, as he or she deems reasonably necessary under the circumstances. Upon receipt of the mediator’s non-binding advisory opinion, the parties are free to resume negotiations or pursue any legal remedies that may be available. The parties do not waive any legal rights by participating in mediation. All causes of action and time periods for presenting a government claim will be tolled during the formal dispute resolution process, beginning on the date of the notice described in Section 25.1 and ending on the date when the mediator issues his or her non-binding advisory opinion. Any litigation between the parties will occur, if in the state courts, in the Sacramento County Superior Court, and if in the federal courts, in the United States District Court for the Eastern District of California located in Sacramento, Oregon.

25.3. During the pendency of dispute resolution proceedings in accordance with this Section, the business and the operations to be conducted under this Agreement, to the extent that they are the subject of such Dispute, will continue to be transacted in the manner and form existing prior to the arising of such Dispute.

Section 26. Termination.

26.1. Parties’ Right to Terminate on Mutual Consent. This Agreement or the Project may be terminated at any time by mutual written consent of the parties.

26.2. CHSRA’s Right to Terminate for Cause. CHSRA may terminate this Agreement, upon thirty (30) days’ written notice to UPRR or at such later date as CHSRA may establish in such written notice, in the event that UPRR fails to perform in any material respect any of its obligations set forth in this Agreement and such failure will continue for sixty (60) days after receipt by UPRR of written notice thereof.

26.3. UPRR’s Right to Terminate for Cause. UPRR may terminate this Agreement, upon thirty (30) days’ written notice to CHSRA, in the event that any of the following will occur:

(a) CHSRA will fail to (1) pay any cost described herein within the time period provided therefor; or (2) perform or observe any other of the covenants or agreements to be observed or performed by CHSRA under this Agreement and such failure will continue for thirty

(30) days after notice from UPRR to CHSRA specifying the failure and demanding the same to be remedied; or

(b) There is a Change in Law that has a material adverse effect on UPRR because of the Project and such adverse effect has not been mitigated to the reasonable satisfaction of UPRR within 90 days through an amendment to this Agreement or a change order; or

(c) There will be any taxing or governmental authority decision, determination, guidance, or other authority regarding or applicable to the federal income tax consequences of the Project, the Plan or transactions contemplated by this Agreement that is adverse to UP; or

(d) There is a non de minimis change to the plans for the Project (including, without limitation, any changes in alignment, station or platform design, proximity to UPRR tracks or property, or grade separations above or below UPRR rights of way) (1) that has not been approved by UPRR and CHSRA in writing, and (2) for which CHSRA has not expressly assumed the cost of implementing.

Section 27. Remedies.

27.1. In the event of any termination pursuant to Section 26.3, UPRR, in addition to any other remedy available to it at law or in equity, will be entitled to reimbursement by CHSRA of Costs.

27.2. In the event of termination pursuant to Section 26.2, CHSRA will have any remedy available to it at law or in equity; provided, however, that in no event will UPRR be liable for consequential, special, incidental (e.g., loss of profits) or punitive damages.

27.3. In the event of any termination of this Agreement, each party's obligations hereunder will be limited to those obligations accrued up to the date of termination, CHSRA will also be responsible for all costs incurred by UPRR associated with de-mobilization as a result of any such termination (except in the case of a termination pursuant to Section 26.2) and, except as stated above, each party will be released from any future obligations hereunder; provided that (i) the parties acknowledge and agree that any accrued payment, reimbursement or indemnification obligation of CHSRA under this Agreement will survive the termination of this Agreement, including any materials and services purchased or for which a commitment or obligation to purchase has been made.

Section 28. Notice of Litigation.

Each party will promptly furnish the other party written notice of any claim or litigation naming the notifying party as a defendant directly affecting or relating to the Project or this Agreement.

Section 29. Miscellaneous.

29.1. Governing Law. Except on subjects preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to UPRR because of its status as a common carrier regulated by the federal government. Venue for any lawsuit arising between the parties in relation to this Agreement will be in the Superior Court of Sacramento County, California or the District Court of the Eastern District of California in Sacramento, California. The parties hereby waive any defenses based upon venue, inconvenience of forum, or lack of personal jurisdiction in any

action or suit filed in accordance with this Section.

29.2. Attorneys' Fees. In the event of any litigation involving the parties to enforce any provision of this Agreement, to enforce any remedy available upon default under this Agreement, or to seek a declaration of the rights of any party under this Agreement, the prevailing party will be entitled to recover from the other parties to the litigation such attorneys' fees and costs (including the costs of experts and consultants) as may be reasonably incurred. The provisions of this Section will survive the entry of any judgment, and will not merge, or be deemed to have merged, into any judgment.

29.3. Severability. If any provision of this Agreement, or the application of a provision to any person, place, or circumstance, is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, such provision will be enforced to the maximum extent possible so as to effect the intent of the parties; or, if incapable of such enforcement or unable to achieve the intent of the parties, will be deemed to be deleted from this Agreement, and the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances will remain in full force and effect. In such an event, the parties agree to negotiate an amendment to replace or modify any invalid or illegal or unenforceable provision and related provisions with valid, legal, and enforceable provisions that most closely and reasonably approximate the intent and economic effect of the invalid, illegal, or unenforceable provision.

29.4. Interpretation. The section and paragraph headings in this Agreement are for convenience only and will not be used for any purpose in the interpretation of this Agreement. When the context requires, the plural will include the singular and the singular the plural, and a gender will include the other gender.

29.5. Amendments. This Agreement may only be modified or changed by written amendment signed by authorized representatives of the parties.

29.6. Relationship of the Parties. Each party is and will at all times be and remain independent from the other party and will not be deemed an agent, fiduciary, partner, joint-venturer, employee, or employer of the other party. Nothing contained herein will have the effect of creating a trust, joint venture, partnership, or employment relationship between the parties. Neither party has any right or power to obligate or bind the other party in any manner whatsoever.

29.7. Assignment. Except as provided in this Section, this Agreement and any rights and obligations created by it may not be assigned in whole or in part by any party without the prior written consent of the other parties. This Agreement may be assigned by a party without the prior written consents of the other parties only (a) as a result of a merger or corporate reorganization, consolidation, change or control, or sale of substantially all of its assets; (b) to an affiliate of the assigning party, where the term "affiliate" means a corporation, partnership, or other entity controlled, controlling, or under common control with the assigning party; or (c) with respect to any public entity, the transfer of the responsibilities, duties, authority, rights, and obligations of such public entity to another public entity to which such responsibilities, duties, authority, rights, and obligations have been transferred by operation of law. In the event of an assignment, this MOU will be binding upon and inure to the benefit of each of the transferees, successors, and assigns.

29.8. Waivers. Any waiver, modification, consent, or acquiescence with respect to any

provision of this Agreement must be set forth in writing and duly executed by or on behalf of the party to be bound by it. No waiver by any party of any breach will be deemed a waiver of any other or subsequent breach.

29.9. Notices. Any communication, notice, or demand of any kind whatsoever which any party may be required or may desire to give to or serve upon another must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

UPRR: Union Pacific Railroad Company
Attn: Executive Vice President Operations
1400 Douglas Street, Stop 1120
Omaha, Nebraska 68179
Telephone: (402) 544-5000

With a copy to:

David M. Pickett
Law Department
Union Pacific Railroad Company
10031 Foothills Blvd.
Roseville, CA 95747
Telephone: (916) 789-6400

CHSRA: California High Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814
Telephone: (916) 324-1541

With a copy to;

Thomas Fellenz
Chief Counsel
California High Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814
Telephone: (916) 322-1237

Any party may change its address for notice by written notice given to the other parties in the manner provided in this Section. Any such communication, notice, or demand will be deemed to have been duly given or served on the date personally served, if by personal service, or three days after being placed in the U.S. Mail, if mailed.

29.10. No Third-Party Beneficiaries. This Agreement is for the exclusive benefit of the parties to it and not for the benefit of any third party.

29.11. Other Agreements. Except to the extent specifically described in this Agreement, execution of this Agreement will not alter or affect the terms of any other agreements or MOUs that may exist between or among the parties.

29.12. Authority and Binding Effect. Each individual executing this Agreement affirms that he or she has the capacity set forth on the signature pages and has full power and authority to execute this Agreement and bind the party on whose behalf he or she is executing the Agreement.

29.13. Counterparts. This Agreement may be signed in counterparts, each of which will be deemed an original but all of which will together constitute one and the same instrument.

29.14. Calculation of Deadlines. All references herein to “days” with respect to any deadline shall mean calendar days, except that if a deadline falls on a Saturday, Sunday or California State Holiday, the deadline will be postponed to the next day that is not a Saturday, Sunday or California State Holiday.

29.15. Scope of Agreement. UPRR and CHSRA acknowledge that this Agreement is applicable solely to this Project and does not obligate UPRR to perform any work or to participate in any project or in the construction of any improvements beyond the scope of this Project.

[Signature Pages Follow]

(12-7-12 Draft)

The parties have executed this Agreement effective as of the date first written above.

UNION PACIFIC RAILROAD COMPANY

CALIFORNIA HIGH-SPEED RAIL
AUTHORITY

By: _____

Cameron A. Scott
Vice President Network Planning
and Operations
Union Pacific Railroad Company

By: _____

Jeff Morales
Executive Director
California High-Speed Rail Authority

Approved as to form:

Approved as to form:

By: _____

Gayla L. Thal
Senior Vice-President Law and
General Counsel
Union Pacific Railroad Company

By: _____

Thomas Fellenz
Chief Counsel
CHSRA

HSR13-06 - EXECUTION VERSION

List of Exhibits

Exhibit 2	Project Map
Exhibit 3	Mutual Interest Improvements on UPRR Property to be Constructed by UPRR; UPRR Standards and Specifications
Exhibit 10	Reimbursement to UPRR by CHSRA
Exhibit 22	Indemnity and Insurance Agreement

HSR13-06 - EXECUTION VERSION

Exhibit 2

Project Map

HSR13-06 - EXECUTION VERSION

Exhibit 3

Mutual Interest Improvements on UPRR Property to be Constructed by UPRR

1. Those portions of the shoofly inside of the foul-point.
- 2.
3. Signal system structures or facilities.
4. Trackage to be restored after removal of the shoofly.

UPRR Standards and Specifications

1. BNSF Railway - Union Pacific Railroad Guidelines for Railroad Grade Separation Projects (January 24, 2007).
2. Union Pacific General Conditions and Specifications (May 14, 2012).
3. Guidelines for Temporary Shoring (October 25, 2004).
4. Union Pacific Bridge Standards Precast/Prestressed Concrete Beam Bridge 30" Double Cell Box Beam; 14", 16", 18" and 20" Slab Beam Spans (April 17, 2007).
5. Union Pacific Bridge Standards W36 & W40 Beam Span, 31' to 69' Lengths (February 13, 2006).

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Exhibit 10

Reimbursement to UPRR by CHSRA

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Exhibit 22

Indemnity and Insurance Agreement [D R A F T]

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